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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/635,107	08/06/2003	Glen Gutgold	18033 (AT 20958-2109)	6970

7590 09/16/2004

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EXAMINER

FIGUEROA, FELIX O

ART UNIT	PAPER NUMBER
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2833

DATE MAILED: 09/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

10/635,107

Applicant(s)

GUTGOLD ET AL.

Examiner

Felix O. Figueroa

Art Unit

2833

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 24 August 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1-20.

Claim(s) withdrawn from consideration: _____

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____

Continuation of 5. does NOT place the application in condition for allowance because: The arguments presented are not persuasive.

Please note that while applicants argues that the Final Office action ignores or disregards recitations or elements of the claim, the Office action addresses the limitations, as follow:


Please note that the recitation that an element is "configured to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. Furthermore, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from the prior art apparatus satisfying the claimed structural limitations. Ex parte Masham, 2 USPQ2d 1647 (1987).

Furthermore, the section "Response to Arguments" discloses "In this case, the bail latch retainer of Parent can receive an appropriate pivotally mounted bail latch", i.e.,

the bail latch retainer of Parent includes the claimed structural limitations and has the ability to perform the recited function.

In response to Applicant's arguments that "the mounting bracket (68) [of Parent] is mounted stationary to the plug (10) and does not move or pivot relative to the mating connector face of the plug", please note that the bail latch is not positively claimed as part of the claimed invention. The claim only requires that the cable connector claimed be configure for receiving a bail latch. .




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